

Senate Engrossed House Bill

**FILED**

**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 286

## **HOUSE BILL 2246**

AN ACT

AMENDING SECTIONS 36-1601, 36-1605 AND 36-1606, ARIZONA REVISED STATUTES;  
AMENDING TITLE 36, CHAPTER 13, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING  
SECTIONS 36-1609 AND 36-1610; AMENDING SECTION 37-623.02, ARIZONA REVISED  
STATUTES; RELATING TO FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-1601, Arizona Revised Statutes, is amended to  
3 read:

4 36-1601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CONSUMER FIREWORK" MEANS SMALL FIREWORK DEVICES THAT CONTAIN  
7 RESTRICTED AMOUNTS OF PYROTECHNIC COMPOSITION DESIGNED PRIMARILY TO PRODUCE  
8 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION AND THAT COMPLY WITH THE  
9 CONSTRUCTION, CHEMICAL COMPOSITION AND LABELING REGULATIONS PRESCRIBED IN  
10 49 CODE OF FEDERAL REGULATIONS PART 172 AND 173, REGULATIONS OF THE UNITED  
11 STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF FEDERAL  
12 REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS ASSOCIATION  
13 STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR TRANSPORTATION OF  
14 FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER 1, 2001 VERSION.

15 2. "DISPLAY FIREWORK" MEANS LARGE FIREWORK DEVICES THAT ARE EXPLOSIVE  
16 MATERIALS INTENDED FOR USE IN FIREWORKS DISPLAYS AND DESIGNED TO PRODUCE  
17 VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION AS  
18 PRESCRIBED BY 49 CODE OF FEDERAL REGULATIONS PART 172, REGULATIONS OF THE  
19 UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION AS PRESCRIBED IN 16 CODE OF  
20 FEDERAL REGULATIONS PARTS 1500 AND 1507 AND THE AMERICAN PYROTECHNICS  
21 ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION AND APPROVAL FOR  
22 TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL PYROTECHNICS, DECEMBER  
23 1, 2001 VERSION.

24 ~~1.~~ 3. "Fireworks":

25 (a) Means any combustible or explosive composition, substance or  
26 combination of substances, or any article prepared for the purpose of  
27 producing a visible or audible effect by combustion, explosion, deflagration  
28 or detonation, ~~and toy cannons in which explosives are used, the type of~~  
29 ~~balloon which requires fire underneath to propel it, firecrackers, torpedoes,~~  
30 ~~skyrockets, roman candles, daygo bombs, sparklers or other fireworks of like~~  
31 ~~construction, fireworks containing any explosive or combustible compound, and~~  
32 ~~any tablet or other device containing an explosive substance~~ THAT IS A  
33 CONSUMER FIREWORK OR DISPLAY FIREWORK.

34 (b) Does not include:

35 (i) Toy pistols, toy canes, toy guns or other devices in which paper  
36 caps containing not more than twenty-five hundredths grains of explosive  
37 compound are used if constructed so that the hand cannot come in contact with  
38 the cap when in place for the explosion.

39 (ii) Toy pistol paper caps that contain less than twenty-hundredths  
40 grains of explosive mixture, or fixed ammunition or primers therefor.

41 (iii) Federally deregulated novelty items THAT ARE known as snappers,  
42 snap caps, party poppers, ~~or~~ glow worms, SNAKES, TOY SMOKE DEVICES AND  
43 SPARKLERS ~~that contain less than twenty-five hundredths grains of explosive~~  
44 ~~compound.~~

1       2- 4. "Governing body" means THE board of supervisors of a county as  
2 to the area within the county but without the corporate limits of an  
3 incorporated city or town,— and means THE governing body of an incorporated  
4 city or town as to the area within its corporate limits.

5       5. "PERMISSIBLE CONSUMER FIREWORKS":

6       (a) MEANS THE FOLLOWING TYPES OF CONSUMER FIREWORKS AS DEFINED BY THE  
7 AMERICAN PYROTECHNICS ASSOCIATION STANDARD 87-1, STANDARD FOR CONSTRUCTION  
8 AND APPROVAL FOR TRANSPORTATION OF FIREWORKS, NOVELTIES AND THEATRICAL  
9 PYROTECHNICS, DECEMBER 1, 2001 VERSION:

10       (i) GROUND AND HAND-HELD SPARKLING DEVICES.

11       (ii) CYLINDRICAL FOUNTAINS.

12       (iii) CONE FOUNTAINS.

13       (iv) ILLUMINATING TORCHES.

14       (v) WHEELS.

15       (vi) GROUND SPINNERS.

16       (vii) FLITTER SPARKLERS.

17       (viii) TOY SMOKE DEVICES.

18       (ix) WIRE SPARKLERS OR DIPPED STICKS.

19       (x) MULTIPLE TUBE FIREWORKS DEVICES AND PYROTECHNIC ARTICLES.

20       (b) DOES NOT INCLUDE ANYTHING THAT IS DESIGNED OR INTENDED TO RISE  
21 INTO THE AIR AND EXPLODE OR TO DETONATE IN THE AIR OR TO FLY ABOVE THE  
22 GROUND, INCLUDING, FOR EXAMPLE, FIREWORK ITEMS COMMONLY KNOWN AS BOTTLE  
23 ROCKETS, SKY ROCKETS, MISSILE-TYPE ROCKETS, HELICOPTERS, TORPEDOES, ROMAN  
24 CANDLES AND JUMPING JACKS.

25       3- 6. "Person" includes AN individual, partnership, firm or  
26 corporation.

27       Sec. 2. Section 36-1605, Arizona Revised Statutes, is amended to read:  
28 36-1605. Permitted uses

29       This article ~~shall not be construed to~~ DOES NOT prohibit:

30       1. The sale at wholesale by a resident wholesaler, dealer or jobber of  
31 fireworks ~~which~~ THAT are not prohibited by this article.

32       2. The sale of fireworks ~~which~~ THAT are to be and are shipped directly  
33 out of the state.

34       3. The use of fireworks by railroads or other transportation agencies  
35 for signal purposes or illumination.

36       4. The sale or use of explosives for blasting or other legitimate  
37 industrial purposes.

38       5. The use of fireworks or explosives, or both, by farmers, ranchers  
39 and their employees, and by state and federal employees who manage wildlife  
40 resources, to rally, drive or otherwise disperse concentrations of wildlife  
41 for the purpose of protecting property or wildlife.

42       6. THE SALE OF PERMISSIBLE CONSUMER FIREWORKS BY A RETAIL  
43 ESTABLISHMENT IF THE RETAIL ESTABLISHMENT COMPLIES WITH THE RULES ADOPTED  
44 PURSUANT TO SECTION 36-1609.

1           7. THE USE OF PERMISSIBLE CONSUMER FIREWORKS BY THE GENERAL PUBLIC,  
2 UNLESS THE USE IS PROHIBITED BY A GOVERNING BODY OF AN INCORPORATED CITY OR  
3 TOWN.

4           Sec. 3. Section 36-1606, Arizona Revised Statutes, is amended to read:

5           36-1606. Consumer fireworks regulation; state preemption;  
6                         further regulation of fireworks by local  
7                         jurisdiction

8           THE SALE AND USE OF PERMISSIBLE CONSUMER FIREWORKS ARE OF STATEWIDE  
9 CONCERN. THE REGULATION OF PERMISSIBLE CONSUMER FIREWORKS PURSUANT TO THIS  
10 ARTICLE AND THEIR USE IS NOT SUBJECT TO FURTHER REGULATION BY A GOVERNING  
11 BODY, EXCEPT THAT AN INCORPORATED CITY OR TOWN MAY REGULATE THE USE OF  
12 PERMISSIBLE CONSUMER FIREWORKS WITHIN ITS CORPORATE LIMITS AND A COUNTY MAY  
13 REGULATE THE USE OF PERMISSIBLE CONSUMER FIREWORKS WITHIN THE UNINCORPORATED  
14 AREAS OF THE COUNTY DURING TIMES WHEN THERE IS A REASONABLE RISK OF WILDFIRES  
15 IN THE IMMEDIATE COUNTY. This article ~~shall not be construed to~~ DOES NOT  
16 prohibit the imposition by ~~municipal~~ ordinance of further regulations and  
17 prohibitions ~~upon~~ ON the sale, use and possession of fireworks ~~within an~~  
18 ~~incorporated city or town~~ OTHER THAN PERMISSIBLE CONSUMER FIREWORKS BY A  
19 GOVERNING BODY. ~~No such city or town~~ A GOVERNING BODY shall NOT permit or  
20 authorize the sale, use or possession of any fireworks in violation of this  
21 article.

22           Sec. 4. Title 36, chapter 13, article 1, Arizona Revised Statutes, is  
23 amended by adding sections 36-1609 and 36-1610, to read:

24           36-1609. State fire marshal; adoption of code; sale of  
25                         permissible consumer fireworks

26           A. THE STATE FIRE MARSHAL SHALL ADOPT RULES PURSUANT TO TITLE 41,  
27 CHAPTER 6 TO CARRY OUT THIS ARTICLE, INCLUDING A RULE THAT ADOPTS THE  
28 NATIONAL FIRE PROTECTION ASSOCIATION CODE FOR THE MANUFACTURE,  
29 TRANSPORTATION, STORAGE AND RETAIL SALES OF FIREWORKS AND PYROTECHNIC  
30 ARTICLES, 2006 EDITION. A PERSON WHO SELLS PERMISSIBLE CONSUMER FIREWORKS TO  
31 THE PUBLIC SHALL COMPLY WITH THOSE RULES RELATING TO THE STORAGE OF CONSUMER  
32 FIREWORKS AND RELATING TO THE RETAIL SALES OF CONSUMER FIREWORKS BEFORE  
33 SELLING PERMISSIBLE CONSUMER FIREWORKS TO THE PUBLIC.

34           B. A PERSON SHALL NOT SELL OR PERMIT OR AUTHORIZE THE SALE OF  
35 PERMISSIBLE CONSUMER FIREWORKS TO A PERSON WHO IS UNDER SIXTEEN YEARS OF AGE.

36           36-1610. Prohibited use of fireworks on state land; civil  
37                         penalty

38           A. THE STATE FIRE MARSHAL MAY IMPOSE A CIVIL PENALTY OF ONE THOUSAND  
39 DOLLARS FOR EACH INCIDENT OF PROHIBITED USE OF FIREWORKS ON STATE LAND IN  
40 VIOLATION OF THIS ARTICLE.

41           B. THE STATE FIRE MARSHAL SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146  
42 AND 35-147, CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION IN THE FIRE  
43 SUPPRESSION REVOLVING FUND ESTABLISHED BY SECTION 37-623.02.

1       Sec. 5. Section 37-623.02, Arizona Revised Statutes, is amended to  
2 read:

3       37-623.02. Emergencies; prohibiting fireworks; liabilities and  
4       expenses; fire suppression revolving fund

5       A. On request of the state forester, the governor may authorize the  
6 state forester to incur liabilities for suppressing wildland fires and  
7 responding to other unplanned all risk activities from unrestricted monies in  
8 the state general fund whether or not the legislature is in session.

9       B. The state forester has the authority to prohibit the use of  
10 fireworks during times of high fire potential in the unincorporated areas of  
11 the state.

12       C. The state forester or the state forester's designee shall review  
13 all liabilities incurred and expenditures made under this section and shall  
14 report the expenditures to the department of administration for audit  
15 according to department of administration rules. The state forester shall  
16 transmit a copy of the report to the state emergency council.

17       D. Liabilities incurred under this section are subject to the  
18 following limitations:

19       1. Wildland fire suppression or other unplanned all risk emergency  
20 liabilities shall not exceed three million dollars of state general fund  
21 monies pursuant to subsection A of this section in a fiscal year for costs  
22 associated with suppressing wildland fires, supporting other unplanned all  
23 risk activities such as fire, flood, earthquake, wind and hazardous material  
24 responses and preparing for periods of extreme fire danger and pre-position  
25 equipment and other fire suppression resources to provide for enhanced  
26 initial attack on wildland fires. The state forester shall not incur  
27 nonreimbursable liabilities for support of nonfire all risk activities. The  
28 governor shall determine when periods of extreme fire danger exist and must  
29 approve any expenditure for pre-positioning activities.

30       2. If the funding authorization in paragraph 1 of this subsection is  
31 exhausted, or if the nonreimbursable liabilities incurred exceed the cash  
32 balance of the fire suppression revolving fund, the state forester shall not  
33 incur additional liabilities without the consent of a majority of the state  
34 emergency council as authorized by section 35-192.

35       E. The state forester shall process and pay claims for reimbursement  
36 for wildland fire suppression services as follows:

37       1. Except as provided by paragraph 2 of this subsection, within thirty  
38 days after receiving a complete and correct claim for wildland fire  
39 suppression services, the state forester shall pay the claim from available  
40 monies that have not been committed to the payment of other wildfire  
41 expenses.

42       2. Within thirty days after receiving a complete and correct claim for  
43 wildland fire suppression services on federal lands, the state forester shall  
44 complete the processing of the claim and forward the claim to the appropriate  
45 federal agency.

1        3. For any valid claim other than for federal reimbursement, if there  
2 is insufficient funding in the fire suppression revolving fund, the holder of  
3 the unpaid claim shall be issued a certificate pursuant to section 35-189.

4        F. No later than December 31 of each year the state forester shall  
5 submit a report to the joint legislative budget committee and the governor  
6 detailing the specific uses of all monies authorized to be expended from the  
7 fire suppression revolving fund and any additional monies authorized by the  
8 governor to prepare for periods of extreme fire danger and pre-position  
9 equipment and other fire suppression resources to provide for enhanced  
10 initial attack on wildland fires.

11        G. Monies received for suppressing wildland fires, pre-positioning  
12 equipment and firefighting resources and other unplanned all risk activities  
13 may be used for the purposes of section 37-623 and this section.

14        H. The state forester shall adopt rules for administering the wildland  
15 fire suppression monies authorized under this section, subject to approval of  
16 the governor.

17        I. The state forester may require reimbursement from cities and other  
18 political subdivisions of this state and state and federal agencies for costs  
19 incurred in the suppression of wildland fires, pre-suppression or unplanned  
20 all risk activities. Reimbursement shall be based on the terms and  
21 conditions in cooperative agreements, land ownership or negligence. The  
22 state forester may require reimbursement from individuals or businesses only  
23 for costs incurred in the suppression of wildland fires or unplanned all risk  
24 activities caused by their negligence or criminal acts.

25        J. A- THE fire suppression revolving fund is established for deposit  
26 of CONSISTING OF CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 36-1610 AND  
27 monies received by the state forester for wildland fire suppression and  
28 pre-positioning equipment and resources and for payment for activities  
29 related to combating wildland fires and supporting other unplanned all risk  
30 activities such as fire, flood, earthquake, wind and hazardous material  
31 responses. The state forester shall not incur nonreimbursable liabilities  
32 for support of nonfire all risk activities. The state forester shall  
33 administer the fund, and all monies received for these activities shall be  
34 deposited, pursuant to sections 35-146 and 35-147, in the fund. Monies in  
35 the fire suppression revolving fund are continuously appropriated to the  
36 state forester, except that if the unobligated balance of the fund exceeds  
37 two million dollars at the end of any calendar year, the excess shall be  
38 transferred to the state general fund. Monies in the fire suppression  
39 revolving fund are otherwise exempt from the provisions of section 35-190  
40 relating to lapsing of appropriations.

41        Sec. 6. Effective date

42        This act is effective from and after November 30, 2010.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.